

Contract for work in international construction projects

(Summary)

The present master thesis analyses the contemporary practice in the field of making contracts for work in international construction projects. Its goal is to answer the following research question: is it possible to use the new Czech trust concept as a payment instrument under the most used FIDIC standard form of contract – Conditions of Contract for Construction First Edition 1999 (better known as “Red Book”)?

The thesis is divided into three chapters, each of them dealing with different aspects of the new trust concept: from construction projects through construction contracts for work to payment conditions.

The opening part of Chapter One focuses on construction projects. It defines their characteristic features and describes the main types of their management, organization and contractual relationships. Next, the chapter discusses the international character of construction projects and concentrates on situations involving a conflict of laws. Party autonomy and the choice of law rule, that empowers parties to designate the applicable law to their contractual relationship, are assumed to be fundamental principles of contract formation in international construction projects. This part of the chapter is concluded by the proposition that there is no binding unified law of construction contract for work and that the unification in this field continues only via non-legislative instruments. This non-state regulation can be represented by the so called *lex mercatoria* - a complex of rules and principles that serves the needs of international trade. The principal part of *lex mercatoria* constitutes the standard terms of contracts or standard contract forms used in particular by non-government organizations. The last part of Chapter One follows this conclusion and enumerates the most well-known types of standard contract forms used either internationally or locally.

Chapter Two focuses on the contract for work, mainly in the field of construction industry. This chapter examines selected foreign legal regulations of this type of contract and assesses in detail the structure and the essential terms most commonly used in international construction contracts. The last two parts of the chapter, similarly to Chapter Three, are based on the assumption that the Czech law is the applicable legal framework. They discuss the new Czech legislation concerning the contract for work provisions and the incorporation of a set of commercial conditions prepared by professional organizations by referencing the conditions in contract or by including them in an exchange of letters. The main changes introduced by the

new Civil Code arise from the different concept of ownership of land and buildings, the new arrangement of construction contracts for work, and the newly defined obligations in the relationship between the contractor and the employer.

Chapter Three analyses and compares payment conditions regulated under the new Czech Civil Code and the FIDIC Red Book. The main part of the chapter is dedicated to a trust concept that was re-introduced into the Czech law by the new Civil Code. This part is based on the presumption that the contractual parties could take some advantages of the Czech trust construct (“svěřenský fond”) and would be willing to use it as a payment instrument during the procedure of payments of the contract price that can involve advance payment, instalments of the contract price or retention money. The contractor can also ask the employer to give the evidence of financial arrangements that will enable the employer to pay the contract price. The question is whether the Czech version of the trust can fulfil also this purpose.

In the closing part of the thesis, conclusions are summarized and the hypothesis that the Czech version of the trust can contractual parties use as a payment tool also under the FIDIC Red Book is confirmed.